IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

CRP.No. 305 of 2001

(OP.83/1999 of ADDL. DISTRICT COURT, THALASSERY)

REVN. PETITIONER/RESPONDENT:

THE KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY THE SECRETARY,
VYDHYUDHI BHAVANAM,
PATTOM,
THIRUVANANTHAPURAM -4.

BY ADV. SRI.A.SUDHI VASUDEVAN, SC, KSEB
ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB

RESPONDENT/PETITIONER:

UPPIKKARAMBATH KITTU @ KUTTIATHA,
MAYANVALAPPIL HOUSE,
PADUVILAYI AMSOM,
KOLATHUMALA,
THALASSERY TALUK,
KANNUR DT.

BY ADV. SRI.T.P. PANKAJAKSHAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO. 1846 OF 2006 IN C.R.P.NO. 305 OF 2001.

DISMISSED.

19.10.2007 SD/- K.T. SANKARAN, JUDGE.

/TRUE COPY/

P.A. TO JUDGE.

K.T. SANKARAN, J.

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C.R.P. No. 305 OF 2001

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Dated this the 19th October, 2007

O R D E R

The Kerala State Electricity Board, respondent in O.P.No.83 of 1999 on the file of the Court of the Addl. District Judge, Thalassery is the Revision Petitioner. The Board challenges the order passed by the court below fixing the compensation payable to the respondent at Rs. 90,937/- together with interest at 12% per annum on Rs.59,285/- as compensation on account of the trees cut for drawal of electric line.

2. The court below relied on the decision of the Larger Bench in **Kumba Amma vs, K.S.E.B. (2000(1) K.L.T. 542)** and referred to the earlier Full Bench decision of this court reported in **1981 K.L.T. 646** (**K.S.E.B. vs. Marthoma Rubber Co. Ltd.**). On the basis of the materials and evidence available in the case and applying the principles of law as settled by the court in ***Kumba Amma's case***, the court below fixed the compensation .

3. Learned counsel for the petitioner submits that in view of the decision of the Supreme Court in **K.S.E.B. vs. Livisha (2007 (3) K.L.T. 1 [SC])**, the order passed by the court below is liable to be set aside and the matter requires to be remanded for fresh consideration. In support of this contention, the learned counsel pointed out the following findings of the Supreme Court in

Livisha's case;

> *"7. . xx xx xx xx*
>
> *The amount of compensation is required to be determined keeping in view the purpose and object of the statute. There cannot be any fixed formula therefor or the other. Although, undoubtedly one formula laid down, may assist the Board and/or Reference Court to apply the same but there cannot be hard and fast rule in this behalf. A fixed formula for determining the amount of compensation although may make the task of the Land Acquisition Officer or the Reference Court easier but in our opinion each case is required to be taken on its own merit.*
>
> *xx xx xx xx*
>
> *10. The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small track of land or through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used.*
>
> *11. So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case. "*

4. Had the court below not taken into account the principles as laid down in ***Livisha's case***, necessarily a remand would be justified. Evidently, at the

time of rendering the impugned order by the court below, the Supreme Court decision was not rendered. However, after going through the order passed by the court below , it can be seen that the findings are rendered by the court below on the basis of the facts and evidence in the case, which would satisfy the parameters in ***Livisha's Case .*** Therefore, I am of the view that a remand to the trial court would not be proper in the facts and circumstances of the case. The court below took note of the Commissioner's report, wherein he has stated that the market value of the property is Rs.15,000/- per cent. However, the court below has fixed the market value of the land at Rs. 2500/- per cent and thereafter fixed the diminution value at Rs.500/- per cent. The court below took note of the fact that a motorable road passes thirty metres away from the property in question and there are several government offices in the locality. The area is an important area and though there is no direct motorable access to the property in question, the facts would indicate that the value fixed by the Commissioner in not on the higher side. The tests laid down in ***Livisha's case*** in paragraph 10 of the judgment were really applied by the court below to the facts of the case and evidence on record though ***Livisha's case*** was decided later in point of time. As per the impugned order, the court below directed the parties to file calculation statements. A copy of the calculation statement is made available before me for perusal. The calculation statement would indicate that 60 trees were cut from the property. I have gone through the value given for

the trees. For example, a jack plant aged 5 years is given the value of only Rs. 5/- and a mango tree aged 10 is given the value of only Rs.10/-. A coconut plant aged 5 years was given the value of Rs.7/- Likewise, value of other trees was also fixed.

5. From the order impugned, it is clear that when the calculation statement was filed, the Board had no objection to the facts and figures stated therein and it is recorded by the court below in the order impugned, as under:

> *"Petitioner filed calculation statement. Respondent has no objection to the statement (vide endorsement on the statement)"*

6. After going through the order passed by the court below and considering the materials and evidence on record, I am of the view that no interference is called for on the valuation and the findings arrived at by the court below . The learned counsel for the petitioner, however, would submit that the interest granted by the court below is excessive. It is stated by the court below that relying on the order passed by the High Court in C.R.P. 870 of 1990 and connected cases , the interest was fixed at Rs.12% per annum.

7. In the facts and circumstances of the case, I am of the view that the court below was justified in granting the interest at 12% per annum from the date of cutting till the date of payment. However, I fix the interest only at 9% per annum from the date of order till date of payment.

8. In the result, the Revision Petition is allowed in part and the order

passed by the court below is confirmed except in respect of the interest awarded. The rate of interest is modified from 12% to 9% per annum for the period from the date of the award till the date of payment.

The Civil Revision Petition is disposed of as above.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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C.R.P. No. 305 OF 2001

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Dated this the 19th October, 2007

O R D E R